Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

EFRAIN TORRES REYES,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

On Petition for a Writ of Certiorari
To the Supreme Court of the State of Colorado

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

As a matter of first impression, whether a one-time waiver of the anti-shuttling right under Article IV(e) of the Interstate Agreement on Detainers (IAD) waives that right both retroactively and prospectively as to any other violations of the IAD.

RULE 14.1(b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Defendant-Appellant and Petitioner: Efrain Torres Reyes.

Plaintiffs-Appellees and Respondents: The People of the State of Colorado.

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PETITION FOR A WRIT OF CERTIORARI

Efrain Torres Reyes ("Reyes") respectfully petitions for a writ of certiorari to review the opinion and judgment of the Supreme Court of the State of Colorado.

OPINION BELOW

The opinion of the Supreme Court of the State of Colorado, dated November 3, 2008, is officially reported at 195 P.3d 662, and is reproduced at App. A.

JURISDICTION

The judgment of the Supreme Court of the State of Colorado sought to be reviewed was entered on November 3, 2008. This petition is timely under 28 U.S.C. § 2101(d) and Supreme Court Rule 13.1 because it is being filed within 90 days of the entry of the opinion and judgment sought to be reviewed. This Court has jurisdiction to review the judgment of the Supreme Court of the State of Colorado pursuant to 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions involved are 28 U.S.C. App. 2, § 2, Art. IV of the Federal Interstate Agreement on Detainers, and C.R.S. § 24-60-501, Art. IV of the Colorado Interstate Agreement on Detainers. The relevant statutory provisions are reproduced at App. B.

STATEMENT OF THE CASE

This petition raises an important matter of law of first impression not only in Colorado, but in the United States as to the Interstate Agreement on Detainers (IAD), a compact between states and the United States regarding the uniform treatment of prisoners subject to detainers in criminal proceedings. This petition seeks review of orders entered by the trial court and affirmed on appeal to the Supreme Court of Colorado denying repeated motions of Petitioner Efrain Torres Reyes to dismiss the Criminal Complaint and Information for multiple violations of Article IV(e) of the IAD. 28 U.S.C. App. 2, § 2, Art. IV, as adopted by Colorado at C.R.S. § 24-60-501, Art. IV. The Colorado Opinion and the IAD are attached in the Appendix.

In April, 2001, Reyes was charged in the underlying Colorado state court criminal proceeding with a number of felony offenses while he was incarcerated in a federal penitentiary in Florence, Colorado ("USP-Florence"). On May 4, 2001, January 2, 2002, and July 12, 2002, the People lodged separate detainers with federal authorities against Reyes. Pursuant to writs of habeas corpus *ad prosequendum* ("habeas writ") obtained by the People, Reyes was repeatedly transferred from USP-Florence to the county jail for various appearances in the state trial court and back again to federal custody in Florence, as follows.

On August 27, 2002, Reyes was transported from USP-Florence to the county jail for his first appearance before the state trial court the next day. At that time he requested a continuance from the

court for an opportunity to obtain private out-of-state counsel. The court honored the request and remanded him back to USP-Florence *although Reyes had not requested to be returned to USP-Florence.* On August 30, 2002, he was returned to USP-Florence. The People admit that this was a violation of Article IV(e) of the IAD.

On September 25, 2002, Reyes was transported back to the county jail for appearances at which time he requested more time to find counsel and also requested to be returned to USP-Florence to be better able to locate counsel because he was not permitted to call his out-of-state counsel from the county jail. Reyes was then returned to USP-Florence on October 6, 2002. Thereafter, neither Reyes nor his counsel requested his return to USP-Florence or waived his anti-shuttling rights under the IAD.

In late October, 2002, Reyes was again transported to the county jail for appearances regarding counsel. On November 1, 2002, the state trial court determined that private counsel was not forthcoming and appointed the public defender to represent him. The public defender then immediately and formally revoked all prior waivers, if any, by Reyes of his rights. In spite of this and contrary to IAD, on November 5, 2002, he was again returned to USP-Florence.

On December 31, 2002, Reyes was finally notified of his IAD rights by the People. On February 24, 2003, Reyes was transported from USP-Florence to the county jail for his preliminary hearing and then, again contrary to the IAD, returned to USP-Florence

on March 4, 2003. On May 9, 2003, Reyes was transported to the county jail for his arraignment, plead not guilty, and again contrary to the IAD was returned to USP-Florence on May 14, 2003.

On June 30, 2003, Reyes filed his first motion to dismiss and then a supplemental motion to dismiss on August 13, 2003, for the People's failure to provide timely notice of the detainers and his IAD rights. He was once again transported from USP-Florence to the county jail to attend an evidentiary hearing on motions before the state trial court on August 18-19, 2003. The Court, finally noting Reyes' unwillingness to waive his anti-shuttling rights, ordered that the repeated shuttling of Reyes be stopped and that he be held at the county jail pending trial.

On October 23, 2003, Reyes filed a motion to dismiss for violations of the Article IV(e) anti-shuttling provision, which the state trial court denied

On October 7, 2004, Reyes was, for the *seventh* time, shuttled back to USP-Florence. On November 10, 2004, Reyes filed a third motion to dismiss for IAD violations which was again denied by the trial court.

In late November, 2004, Reyes was transported to the county jail for trial to the court where he was found guilty and sentenced to prison terms.

Reyes then filed appeals of his conviction with the Colorado Court of Appeals and then the Colorado Supreme Court. The parties agreed that by requesting to be returned to USP-Florence to contact

his out-of-state attorney, Reyes on that one occasion waived his IAD right not to be shuttled back to the sending State. On appeal, the People conceded that the pre-waiver transfer was a violation and the post-waiver transfers were also violations of the IAD anti-shuttling right if not waived by the one-time intervening request to be returned.

In its split Opinion, issued November 3, 2008, the Colorado Supreme Court concluded and ruled 4-3 as a matter of law and first impression that by requesting to be returned to USP-Florence, the sending State, so that he could contact his out-of-state counsel the defendant waived the earlier August 30, 2002, IAD violation and could not thereafter revoke the waiver as to all subsequent and multiple violations of the IAD anti-shuttling provision. The dissenting three justices reasoned that the majority's ruling was unprecedented and "introduces the concept of retroactive waiver into the IAD for the first time," and, further, "conflates the distinct nature" of the Article III(a) and Article IV(c) right to speedy trial with the Article IV(e) right not to be returned back to the sending state before trial.

REASONS FOR GRANTING THE PETITION

Neither this Court nor, to Petitioner's knowledge, has any other court, previously addressed the questions of whether a one-time waiver of the anti-shuttling right under Article IV(e) waives that right both retroactively and prospectively.

I. THE COLORADO DECISION CONFLICTS WITH THE IAD STATUTE AND PRIOR DECISIONS OF THIS COURT

Article IV secures to a defendant two separate and distinct rights. In *United States v. Mauro*, 436 U.S. 340, 352, 98 S.Ct. 1834, 1843, 56 L.Ed.2d 329 (1978), Justice Byron White referred to them as "two important limitations ...placed on a prosecuting authority one it has obtained the presence of a prisoner pursuant to Art. IV." *Also, Alabama v. Bozeman*, 533 U.S. 146, 151, 121 S.Ct. 2079, 2083, 150 L.Ed.2d 188 (2001). First, Article IV(c), along with Article III(c), secures the right to speedy trial. Second, Article IV(e) secures the right not to be returned to the sending state prior to trial after being shuttled to the receiving state.

We are not here concerned with the IAD speedy trial requirements. Rather, this petition arises out of the second right secured by subsection (e) of Article IV, the right to be tried in the requesting State before being shuttled to back to the original State. See discussion, *United States v. Ford*, 550 F.2d 732, 737-41 (2nd Cir. 1977), aff'd *sub. nom.*, *United States v. Mauro*, 436 U.S. 340 (1978). We are also not concerned with the rule that a defendant may waive his rights, including the anti-shuttling right, under the IAD. *See, Bozeman*, 533 U.S. at 156-7; *New York v. Hill*, 528 U.S. 110, 116 (2000); *Gray v. Benson*, 608 F.2d 825, 827 (10th Cir. 1979). Rather, the issue here is whether a *one-time* waiver of the right secured under Article IV(e) operates both prospectively and retrospectively as to other violations of the right.

As the Supreme Court ruled in Bozeman: *"[E]very* prisoner arrival in the receiving State, whether followed by a very brief stay or a very long stay, triggers IV(e)'s 'no return' requirement." *Bozeman*, 533 U.S. at 154. (emphasis by the Court); see also, *United States v. Pursley*, 474 F.3d 757, 763 (10th Cir. 2007), (citing *Bozeman*); *Burres v. Turnbo*, 743 F.2d 693, 702 (10th Cir. 1984) (holding that the reason why a receiving state does not try a defendant before returning him to the jurisdiction of his original confinement is irrelevant, and that the fact of such return by itself triggers the automatic sanction of dismissal); *United States v. Lawson*, 736 F.2d 835, 840 (2nd Cir. 1984) (the anti-shuttling prohibition of Article IV(e) is not dependent upon the timing of trial). The acts of shuttling, not the speed of the trial, is the issue here.

Subsection (e), the anti-shuttling provision, was included in the IAD specifically to remedy problems presented by detainers distinctly different from the speedy trial issue. *Burrus v. Turnbo*, 743 F.2d 693, 696 (9th Cir. 1984) (citing, *Mauro*, 436 U.S. at 353, 358 n.25, 359-60; and *Ford*, 550 F2d at 737-40; *see also, Bozeman*, 533 U.S. at 155-6; and *United States v. Dixon*, 592 F.2d 329, 333-4 (6th Cir. 1979). The extensive review of pre-IAD detainer abuse and of the Article IV(e) legislative history by the Second Circuit in *Ford* and affirmed by this Court in *Mauro* and again recently in *Bozeman* establishes beyond dispute that Article IV(e) was included by the drafters to address the problems and abuses of constant shuttling, as occurred here, rather than the right to a speedy trial.

The relatively recent decision of this Court in *Bozeman* closed the debate on Article IV(e)'s anti-shuttling provision. The Court found and ruled that the language of Article IV(e) is "absolute," and is to be strictly and literally applied according to its plain terms. *Bozeman*, 533 U.S. at 153, 156. Thus, dismissal of pending criminal charges in the receiving jurisdiction is mandatory and automatic upon return of the defendant to his place of incarceration prior to trial, without regard to whether the violation of Article IV(e) was "*de minimis*, technical or harmless," without regard as to whether the shuttling actually benefited the prisoner, and without reference to whether or not dismissal would further the policies and intent behind the IAD. *Bozeman*, at 533 U.S. at 152-6 (dismissal required "despite the fact that the interruption of the initial imprisonment lasted for only one day [so that the defendant could attend his arraignment]") (expressly considering and rejecting each of these arguments and overruling all prior contrary decisions). Significantly, as an absolute and mandatory requirement, and as the State's burden and not the prisoner's, the prisoner is not even required to demonstrate any prejudice sustained by him from the illegal shuttling. *Bozeman*, 533 U.S. at 153, 156.

The need for strict compliance by the prosecuting State of Article IV(e), affirmed in *Bozeman*, is further demonstrated by the severe sanction dismissal with prejudice for violations included by the authors of the IAD. *Kadlec v. United States*, 2007 WL 2042249, *9 (E.D.Wis. 2007). As Justice Alito recently noted, the severe sanction of dismissal with prejudice is included in a statutory scheme to promote

compliance with the legislation, "and the knowledge that a violation could potentially result in the imposition of this sanction gives the prosecution a powerful incentive to be careful about compliance." *Zedner v. United States*, 547 U.S. 489, 126 S.Ct. 1976, 1984, 164 L.Ed.2d 749 (2006). Compliance with the IAD is the burden of the receiving State, not the defendant. *People v. Allen*, 744 P.2d 73, 77 (Colo. 1987); *Queen v. Feden*, 2005 WL 1941693, *3 (D.Kan. 2004); *People v. Lincoln*, 601 P.2d 641, 644 (Colo.App. 1979).

It is clear that for Article IV(e) to be meaningful in its remedial purpose, as this Court stated in *Bozeman*, "*every*" prisoner arrival in the receiving State, triggers Article IV(e)'s 'no return' requirement. The Colorado court's decision that any one-time waiver of the right operates both retrospectively and prospectively as to every other violation of the IAD conflicts with the very purpose of the statute as recognized and applied by this Court in *Bozeman* and *Mauro*. Significantly and as further evidence of Congress's awareness of the distinct differences between the nature of the rights, both Article IV(c) and Article III(c) expressly provide that a defendant may waive that speedy trial right by requesting a continuance, while Article IV(e) contains no such provision for the obvious reason that "each" arrival triggers the right not to be returned to the sending State before trial.

As with Reyes and as recognized in *Bozeman*, *Ford*, *Dixon*, and many other decisions, a defendant without the protections of Article IV(e) of the IAD a defendant may be shuttled back and forth by the prosecution between States many, many times

potentially to great detriment to due process and a fair trial. The Colorado court's decision applying a waiver of the anti-shuttling right on one occasion prospectively to all subsequent shuttling should not and cannot be sustained under either Article IV(e) of the IAD, its history and remedial purpose, or the clear decisions of this Court.

II. THE COLORADO DECISION CONFLICTS WITH DECISIONS OF OTHER STATES ON THE RETROACTIVE WAIVER OF AN IAD VIOLATION

As noted by the dissenting justices in the Colorado decision, the majority failed to cite any authority for the proposition that a violation of the IAD may be waived retroactively, after the violation has already occurred. *Reyes v. People*, 195 P.3d 662, 671 (Colo. 2008). The justices further cited to contrary authority that, a least in the context of Article III(c)'s speedy trial provision, a defendant cannot validly waive, retroactively, a violation of his IAD rights. *Id.*; *Monroe v. State*, 978 So.2d 177, 183 (Fla.App. 2007); *State v. Smith*, 686 S.W.2d 543, 549 (Mo.App. 1985); *State v. Mason*, 218 A.2d 158, 163 (N.J.Super. 1966); *Commonwealth v. Mayle*, 780 A.2d 677, 683 (Pa.Super. 2001).

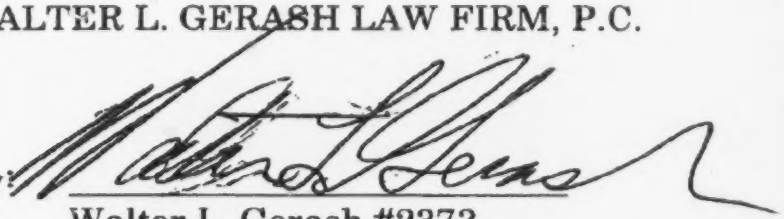
Thus, a one-time *pro se* waiver by Reyes of a right not to be returned, a right unknown to him at the time, so that he could contact his out-of-state counsel when he was being denied such contact by the county jail, should not and cannot operate as a retrospective waiver of the People's previous violation of Article IV(e) of the IAD.

CONCLUSION

For the reasons stated herein, the defendant-petitioner requests that the Court accept this petition and issue a writ of certiorari from the Supreme Court of the State of Colorado.

Respectfully submitted this 30th day of January, 2009.

WALTER L. GERASH LAW FIRM, P.C.

By: 

Walter L. Gerash #2373

ATTORNEY FOR DEFENDANT / PETITIONER

APPENDIX A

Efrain Tores Reyes v. People of the State of Colorado,
Supreme Court of Colorado (November 3, 2008)

Reyes v. People
195 P.3d 662

Supreme Court of Colorado, En Banc.
Efrain Torres REYES, Petitioner,
v.
The PEOPLE of the State of Colorado, Respondent.
No. 07SC658.

Nov. 3, 2008.

Walter L. Gerash Law Firm, P.C., Walter L. Gerash, James F. Scherer, Denver, Colorado, Attorneys for Petitioner.
John W. Suthers, Colorado Attorney General, Robert A. Chappell, Special Assistant Attorney General, Denver, Colorado, Attorneys for Respondent.

Justice COATS delivered the Opinion of the Court.
Reyes sought review of the court of appeals' judgment in *People v. Reyes*, 179 P.3d 170 (Colo.App.2007), which affirmed his convictions on numerous criminal charges arising from a home invasion. Before trial, the district court denied his motions to dismiss for various violations of the anti-shuttling provision of the Interstate Agreement on Detainers. The court of appeals upheld that ruling, finding that Reyes effectively waived the protections of the anti-shuttling provision by either requesting or in transfers between state and federal custody during numerous and lengthy continuances, moved for by him.

[1] By asking that he be returned to federal custody before final disposition of the charges against him, Reyes both waived the protections of the anti-

shuttling statute at that time and was barred from asserting any earlier unobjected-to violations. The judgment of the court of appeals is therefore affirmed.

I.

For his part in a 1999 home invasion in Arapahoe County, the defendant, Efrain Torres Reyes, was convicted of first degree kidnapping, sexual assault, second degree kidnapping, sexual assault on a child, first degree burglary, aggravated robbery, second degree sexual assault on a child, felony menacing, and third degree assault, for which he was sentenced to three consecutive life terms in prison, plus forty-eight years. Reyes and his accomplice were apparently looking for a large amount of money they believed to be located on the premises. Evidence indicated that the occupants of the home were beaten and terrorized, and their ten-year-old daughter was raped and sodomized by Reyes.

Reyes was arrested in 2000 in New Mexico on a federal firearms charge, for which he was ultimately convicted and sentenced to a term of forty-eight months at the federal penitentiary in Florence. In April 2001, an arrest warrant was issued in Arapahoe County, and a detainer was lodged against him by this state. During the course of the state proceedings, Reyes was produced by writ in the Arapahoe County District Court for various hearings, after a number of which he was returned to federal custody in Florence.

At his first appearance in state court in August 2002, Reyes, who was assisted by the state public defender,

requested that the matter be reset to give him an opportunity to contact a private attorney who had represented him in the past. The district court reset the advisement for September 27, 2002, and with the prosecution's assurance in open court that it would "try to get the defendant back at that time," Reyes was returned to federal custody. When Reyes was brought back to Arapahoe County on September 27, he told the court that he had been unable to contact the New Mexico attorney he had in mind.

At that time, Reyes expressly requested, in open court, that he be returned to federal custody in Florence again because he would be permitted there, unlike the Arapahoe County jail, to make the long distance telephone calls necessary to arrange for private counsel. After an exchange in which Reyes was quite insistent that he be returned to federal custody, the court denied his demand but assured him that it would try to get the New Mexico attorney to contact Reyes in the Arapahoe County jail and would direct the sheriff to accept and transfer to Reyes any *664 calls from that attorney. Four days later, with attempts at contacting Reyes's desired attorney still unsuccessful, he again demanded in open court to be returned to federal custody. His demands were once more rejected by the district court, with express directions to the sheriff to accommodate Reyes's efforts to contact both the New Mexico attorney and a local attorney.

At a hearing on October 3, 2002, the state public defender, who was again assisting Reyes, represented that the court's directions had not been followed by the sheriff and that Reyes was asking that he be granted additional time and a transfer

back to the federal penitentiary. At that point, the court granted the request to send Reyes back to Florence, and it set the matter for hearing on October 25. When Reyes returned to Arapahoe County for the October 25 hearing, still without counsel, the court finally required that his eligibility for public defender representation be evaluated, and it ordered that he not be returned to Florence for one week, during which time the district attorney agreed to contact the New Mexico attorney.

The following week, Reyes appeared before the court, again with the public defender. After receiving assessments from the district attorney and public defender concerning the likelihood that the New Mexico attorney would ever be retained, the court appointed the public defender and set the matter for preliminary hearing. To accommodate the public defender's schedule, the defense waived its right to a preliminary hearing within thirty days, and the hearing was set for January 22, 2003. At the time of his appointment and again several days later, the public defender asserted generally that the defendant was invoking all his rights, revoking any waivers, and demanding access to all physical evidence.

Later in November, Reyes was again returned to Florence; and on December 6, 2002, the local private counsel entered an appearance in place of the public defender and immediately moved to continue the preliminary hearing again. Reyes was brought back to Arapahoe County for a two-day preliminary hearing in February 2003, after which he was returned to federal custody. Reyes was again brought to Arapahoe County on May 9, 2003, to confer with

counsel and be arraigned, after which he was again returned to Florence.

On June 30, 2003, Reyes filed a motion to dismiss for violation of the notification requirement of Article III of the Interstate Agreement on Detainers [FN1], but failed to assert any violation of the anti-shuttling provision.[FN2] In August, when Reyes was brought back to Arapahoe County for hearings on his motions, and argument on his IAD motion was delayed, the district court (acting through a different judge), on its own initiative, ordered that Reyes remain in state custody to avoid a possible anti-shuttling violation. One month later, when the court actually heard his Article III claim, Reyes's counsel for the first time informed the court that he intended to raise an anti-shuttling challenge, based on previous transfers between Arapahoe County and Florence. The court then ordered that Reyes be held in Arapahoe County until the motions hearing recommenced on October 8, 2003.

FN1. *See* § 24-60-501, art. III(b), C.R.S. (2007).

FN2. *See* § 24-60-501, art. IV(e), C.R.S. (2007).

On October 8, Reyes's counsel filed his first anti-shuttling motion and again waived speedy trial in conjunction with a request to continue the October 20 trial date. The district court ultimately denied the defense motion to dismiss, and Reyes requested a further delay to petition for intervention by this court. His petition was eventually denied, but during the delay occasioned by it, he was once again transferred back to federal custody in Florence, resulting in a second motion to dismiss for violation

of the anti-shuttling provision. Although the district court acknowledged that this final transfer violated its express order, it again denied dismissal as a remedy.

On direct appeal of his convictions, Reyes assigned error to the denial of both motions to dismiss for anti-shuttling violations. The court of appeals rejected these challenges, finding that he had waived the statute's anti-shuttling protections by requesting numerous *665 continuances, during which he either expressly requested or acquiesced in his return to the federal penitentiary in Florence. Reyes then petitioned for further review in this court, by writ of certiorari.

II.

[2] The Interstate Agreement on Detainers is a compact, entered into by the federal government and the vast majority of states, including Colorado. *See* § 24-60-501, C.R.S. (2007). The Agreement creates uniform procedures for lodging and executing detainers on prisoners in other states to ensure that they will be held until they can be tried on outstanding charges. *Alabama v. Bozeman*, 533 U.S. 146, 148, 121 S.Ct. 2079, 150 L.Ed.2d 188 (2001). Article III of the Agreement gives a prisoner against whom a detainer has been lodged the right to request a final disposition of the relevant charges; and Article IV gives the jurisdiction in which charges remain untried the right to have the prisoner made available for trial. *Id.* at 149-50, 121 S.Ct. 2079. Once invoked, each article provides a specific, but different, time frame within which trial must be had.

For various policy reasons (which remain to some extent unclear, *see* *id.* at 156, 121 S.Ct. 2079), each article also contains what has come to be known as an "anti-shuttling provision," prohibiting the return of a prisoner to the sending state before completion of the trial for which he was initially transferred. In particular, Article IV(e) specifies:

> If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

§ 24-60-501, art. IV(e), C.R.S. (2007). While the Supreme Court has interpreted this language to mandate dismissal upon premature return, regardless of the brevity of the return or harmlessness of the error, it has also expressly noted that a receiving state is not barred from returning a prisoner who has waived his rights under Article IV(e). *Bozeman* at 156-57, 121 S.Ct. 2079.

In reliance on the general rule that presumes the availability of waiver, *see* *United States v. Mezzanatto*, 513 U.S. 196, 200-201, 115 S.Ct. 797, 130 L.Ed.2d 697 (1995), of even the most basic rights of criminal defendants, *see* *Peretz v. United States*, 501 U.S. 923, 936, 111 S.Ct. 2661, 115 L.Ed.2d 808 (1991); and the court's determination that the IAD contemplates a degree of party control that is consonant with the background presumption of waivability; the Supreme Court had earlier found a valid waiver of the time limits of Article III from

nothing more than defense counsel's agreement to a specified delay in the trial date. *See* *New York v. Hill*, 528 U.S. 110, 120 S.Ct. 659, 145 L.Ed.2d 560 (2000). Similarly, we (along with a number of other state and lower federal courts) have long held that IAD rights are nonjurisdictional and nonconstitutional and are subject to voluntary waiver, without any need for a concomitant showing that the waiver was knowing and intelligent. *See* *People v. Moody*, 676 P.2d 691, 695 (Colo.1984); *see, e.g.*, *State v. Nonahal*, 241 Wis.2d 397, 626 N.W.2d 1, 4 (App.2001) (finding that IAD rights are statutory in nature and are waived if the prisoner requests a procedure inconsistent with the statute's provisions).

[3][4] Nothing in either the statute itself or the notion of waivability generally, however, permits a prisoner to dictate the jurisdiction of his custody or location of his confinement. To the extent that the anti-shuttling provision exists for his benefit, a prisoner may waive the statute's prohibition against pre-trial return to a sending state; but by doing so, he acquires no greater right, to actually demand his return to the sending state, much less to demand his return when, only when, or only for as long as, it suits his purposes. By waiving the protections of the applicable anti-shuttling provision, a defendant merely relieves the trial court of a statutory obligation to dismiss if he is returned before trial, by which it would otherwise be bound.

[5] Similarly, whether or not a defendant might also retain sufficient control to be able to expressly limit the nature or extent of an *666 anti-shuttling waiver, if that be his wish, nothing in the statute or the notion of waiver itself suggests that a defendant's

statutory right to remain in a receiving state until his trial automatically springs back into effect each time he is returned to that state for further proceedings in the same prosecution. On the contrary, rather than purporting to prohibit a receiving state from returning a defendant after particular proceedings or events, the statute protects a defendant by requiring that the prosecution against him be dismissed upon his return to the sending state, at any point in time prior to his trial. By voluntarily requesting that he be returned before his trial, without more, a defendant does not simply waive his right to assert a violation of the statute for a particular transfer; he waives the statutory protection against premature return and its mandatory sanction of dismissal.

[6] Finally, while nothing in the statute or the concept of waiver itself precludes the subsequent revocation, or withdrawal, of a waiver of the anti-shuttling provision, even waivers of fundamental trial rights are typically not subject to revocation as a matter of right. *See* Crim.P. 23(6) (prohibiting defendant from withdrawing voluntary and knowing waiver of jury trial as a matter of right, and allowing it only with permission of court); *People v. Price*, 903 P.2d 1190, 1192-93 (Colo.App.1995), *cert. denied* (holding that court is not compelled to grant criminal defendant's request to withdraw valid waiver of right to counsel); *Sewell v. Jefferson County Fiscal Ct.*, 863 F.2d 461, 466 (6th Cir.1988)(relying on *Hanlon v. Providence Coll.*, 615 F.2d 535, 538-39 (1st Cir.1980) for proposition that party withdrawing right to jury trial may not simply change his mind); *Gen. Bus. Servs., Inc. v. Fletcher*, 435 F.2d 863, 864 (4th Cir.1970); *State v. Gallegos*, 147 P.3d 473, 476-77

(Utah Ct.App.2006) (holding that mid-trial appointment of counsel after valid waiver by competent defendant is within discretion of court); *State v. Vincent*, 137 N.M. 462, 112 P.3d 1119, 1133 (Ct.App.2005) (holding that assistance of counsel may not be demanded as matter of right after a valid waiver); *see generally* H.H. Henry, Annotation, *Withdrawal or Disregard of Jury Trial in Civil Action*, 64 A.L.R.2d 506, 517-19 (1959) ("The rule recognized in a number of cases is that once a waiver of jury trial has matured, the waiver may not be withdrawn at the insistence of one party."). If for no other reasons than scheduling and orderly administration of the proceedings, once a right has been effectively waived, that waiver can be revoked and the waived right reclaimed only in the discretion of the court. Whether or not a court might, under some set of circumstances, be held to have abused its discretion in refusing to permit a defendant to reclaim the protections of the anti-shuttling provision, it is enough here that such an abuse could not occur in the complete absence of a motion to revoke the defendant's prior waiver and an adverse ruling by the court.

At least by September 27, 2002, when Reyes was brought to the Arapahoe County District Court for the second time, it is undisputed that he not only requested, but in fact demanded, to be returned to Florence, rather than remain in the Arapahoe County jail. Over the next nine months, he was brought to state court and returned to federal custody frequently and, on a number of occasions, at his own insistence. He failed to object or allege a violation of the anti-shuttling provision until more than a year later, on October 8, 2003.

The defendant, even arguably, attempted to revoke his earlier waivers on only one occasion. When the public defender was briefly appointed to represent him, counsel asserted generally that the defendant was invoking all of his rights, revoking any waivers, and demanding access to all physical evidence. Nothing in this general assertion suggested to the court an intent to revoke the defendant's anti-shuttling waiver, nor did defense counsel object to the return of his client to federal custody thereafter or seek an exercise of the court's discretion in this regard. When the defendant finally moved for dismissal on October 8, he alleged that the earlier returns were done without specific waivers on each occasion, but he never moved to revoke his prior waivers; and although the district court had by then ordered that the defendant remain in state custody to ensure against a possible future anti-shuttling*667 violation, it never exercised its discretion to permit him to revoke any prior waiver or reclaim the statutory protection that he earlier waived.

When Reyes was returned to federal custody for the second time, on October 3, 2002, he was returned at his own insistence. His voluntary waiver of the IAD's anti-shuttling provision at that time waived his statutory right to dismissal for any further return, unless or until he was permitted to revoke that waiver. The district court never granted a motion to revoke the defendant's prior waiver because no such motion was ever made.

III.

Arguably, Reyes also waived the protection of the IAD's anti-shuttling provision at his first appearance in state court, even though the record does not reflect an express request to be returned to federal custody at that time. He was returned to Florence following his first appearance only upon his own request for more time to contact and retain an attorney who had represented him in the past and only upon the assurance of the prosecutor, in open court, that he would try to have the defendant returned for the rescheduled advisement date. Whether or not a defendant's request and acceptance of a continuance under these circumstances could amount to a voluntary waiver of the anti-shuttling provision, it is enough here that Reyes' subsequent express waiver, prior to any objection to his return, was sufficient to bar him from asserting any prior violation.

[7] Whatever the precise rationale that led the signatories to agree to Article IV(e)'s anti-shuttling provision, *see* *Bozeman*, 533 U.S. at 154-46, 121 S.Ct. 2079, it clearly dove-tails with the article's requirement for speedy disposition, once a receiving state invokes its statutory prerogatives. Like Article IV's 120-day time limitation on bringing a defendant to trial, its anti-shuttling protections may be waived by a voluntary act with which they are inconsistent. *See* *Bozeman*, 533 U.S. at 152-53, 121 S.Ct. 2079; 156-57 (analogizing waiver of anti-shuttling provision to waiver of article III's speedy trial provision in *Hill*, 528 U.S. at 114-15, 120 S.Ct. 659); *see also* *Moody*, 676 P.2d at 695 (holding that waiver need only be voluntary); *see* *Nonahal*, 626 N.W.2d at 4 (holding anti-shuttling provision waived by requesting "a procedure inconsistent with the statute's provisions"). In this jurisdiction, we have

long held that requesting a further continuance is an affirmative action constituting a waiver of whatever right to discharge for a prior speedy trial violation a defendant may have had at the time. *See* *Keller v. People*, 153 Colo. 590, 596, 387 P.2d 421, 425 (1963); *see also* *State v. Dumas*, 68 Ohio App.3d 174, 587 N.E.2d 932, 933-35 (1990) (concurring in prosecutor's request for continuance after speedy trial violation waived ability to challenge violation); *cf.* § 18-1-405, C.R.S. (2007) (codifying aspects of this principle generally by specifying that assertion of speedy trial violation is waived unless raised before trial, pre-trial motions, or guilty pleas).

The anti-shuttling provision protects a defendant by entitling him to remain in the receiving state, rather than being returned to the sending state prior to trial. A request to be returned to the sending state, made any time before trial, clearly waives that protection. If a defendant prefers to be returned to the custody of the sending state pending trial, he may of course waive his right to dismissal for a premature return and request such a transfer; but in doing so, he takes an affirmative action in direct conflict with his right to remain in the receiving state pending trial. Whether or not the defendant might otherwise have been entitled to dismissal for deprivation of that right, his subsequent waiver of the protections of the statute also waives his right to initially assert a previous violation.

IV.

By requesting that he be returned to federal custody before final disposition of the charges against him, the defendant not only waived the protections of the

anti-shuttling statute at that time but also was barred from asserting any earlier unobjected-to returns. The judgment of the court of appeals is therefore affirmed.

*668 Justice BENDER dissents, and Chief Justice MULLARKEY and Justice MARTINEZ. join in the dissent.

Justice BENDER, dissenting.

The majority concludes that, under the Interstate Agreement on Detainers ("IAD"), a defendant who requests a transfer back to the sending state on a one-time basis and for the limited purpose of securing the counsel of his choosing, thereby waives any violations of the IAD arising from transfers prior to the requested transfer. Maj. op. at 663, 665-66, 667. Moreover, the majority concludes that, after a waiver as to a single transfer has been made, the defendant may thereafter be shuttled back and forth between the receiving and sending states indefinitely, even though the defendant has neither requested nor consented to these subsequent transfers. Maj. op. at 663, 665-66. The majority also concludes that when a defendant's motion to continue the trial is granted by the trial court in the receiving state, the defendant waives, both retroactively and prospectively, his rights, not only under the speedy trial provision of article IV of the IAD, but under the no return provision of that article as well. Maj. op. at 666-67.

The majority introduces the concept of retroactive waiver into the IAD for the first time. Cases of other jurisdictions construing the IAD do not support this new concept. The majority concludes that the types of defendant conduct constituting a waiver of the

protections of article IV, the right to trial within 120 days after arrival in the receiving jurisdiction and the right not to be returned to the sending state before trial on the outstanding charges, are identical. This conclusion conflates the distinct nature of these two rights. Finally, the majority contravenes the express statutory command of article IX of the IAD that the "agreement shall be construed liberally so as to effectuate its purposes." The purposes of the no return provision include: (1) encouraging expedited resolution of outstanding charges against the prisoner by requiring that the receiving state bear the expense of housing the prisoner prior to trial, and (2) protecting the prisoner from prosecutorial abuse of the simplified detainer system by lodging groundless and bad-faith detainers.

Recently, the United States Supreme Court held that article IV(e) is to be interpreted strictly and literally to require dismissal of criminal charges when a prisoner's right of no return is violated. *Alabama v. Bozeman*, 533 U.S. 146, 155, 121 S.Ct. 2079, 150 L.Ed.2d 188 (2001) (holding that no de minimis exception to article IV(e) exists, and, therefore, a transfer for even one day violates the agreement). Although this is a relatively new case and Congress may change this construction of article IV(e), I feel compelled to apply the Court's mandate and respectfully dissent.

I.

The IAD creates uniform procedures for lodging and executing detainers. *Bozeman*, 533 U.S. at 146, 121 S.Ct. 2079. A detainer is a legal order that requires a state to hold a currently imprisoned individual

when he has finished serving his sentence so that another state may try him for a different crime. *Id.* "The Agreement attempts to remedy the disadvantages and hardships imposed upon prisoners attendant with the use of detainers and to eliminate potential abuses of the detainer system." *United States v. Dixon*, 592 F.2d 329, 333 (6th Cir.1979). The central provisions of the IAD are articles III and IV. *Id.* at 334. Article III sets forth the procedure by which a prisoner against whom a detainer has been lodged can demand speedy disposition of the charges giving rise to the detainer. *Id.* Article IV provides a means by which a prosecutor who has lodged a detainer against a prisoner in another jurisdiction can secure temporary custody of that prisoner for the disposition of outstanding charges. *Id.*

Article IV of the IAD grants two separate rights to a prisoner of one state against whom a detainer is lodged by another state. § 24-60-501, art. IV, C.R.S. (2008). These rights are triggered by the charging jurisdiction's request for temporary custody of the prisoner for the purpose of resolving the charges pending against him. *Id.* Article IV(c) provides that "trial shall be commenced within one hundred twenty days of the arrival*669 of the prisoner in the receiving state." Article IV(e), referred to by the Supreme Court as the "no return provision," grants a different right to the prisoner:

> If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's return to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be

> of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

It is article IV(e), the no return provision, that is in issue in this case, and not article IV(c)'s speedy trial provision.

Also relevant to the disposition of this case is article IX, which provides that the "agreement shall be construed liberally so as to effectuate its purposes." The IAD is a federal law subject to federal construction, and we are bound by the decisions of the United States Supreme Court. *Bozeman*, 533 U.S. at 149, 121 S.Ct. 2079.

With this background in mind, I review some of the facts relevant to this case.

II.

The record reveals that, while the defendant was transferred from state custody to federal custody six times, only one of those transfers was made at his request. Most importantly, the defendant made his requests for this particular transfer solely for the purpose of contacting his attorney in another state. His request for transfer was necessitated by the jail's failure to obey the trial court's order directing the jail staff to allow the defendant phone access to retain counsel. On November 1, 2002, however, counsel was appointed to represent the defendant, and, therefore, he made no further requests to be returned to the federal penitentiary in Florence, Colorado ("USP-Florence") after that date. Nonetheless, the trial court transferred the defendant four more times after November 1. Moreover, the very first transfer of the

defendant from state custody back to federal custody occurred on August 28, 2002, before the defendant's first request for a transfer on September 27, 2002. Thus, as the facts establish, the defendant was transferred five times despite not having requested those transfers.

After sentencing on federal criminal charges, the defendant was incarcerated at USP-Florence. While the defendant was serving his federal sentence, Arapahoe County lodged a detainer with federal authorities against him. Because the defendant was serving his federal sentence at the time it was lodged, the protections of the IAD were triggered.

The defendant was first transported to Arapahoe County on August 27, 2002, one day before his first appearance in district court. At this hearing, the defendant requested a trial continuance, which the court granted, but he did not ask to be remanded to USP-Florence. The trial court nevertheless remanded the defendant to USP-Florence.

Approximately one month later, the defendant was again transported to Arapahoe County on September 25, 2002, for appearances in district court on September 27, October 1, and October 3. At the first of these appearances, the defendant stated that he had been unable to contact his New Mexico attorney because the Arapahoe County jail did not have long distance service. He requested return to USP-Florence, so that he would be able to call the New Mexico attorney. The court denied this request. Instead, the court ordered the district attorney to call the New Mexico attorney to be sure that he intended to represent the defendant. The court further

directed the sheriff to advise the jail staff to expect a call from New Mexico and to allow the defendant to receive the call.

At the next appearance, on October 1, 2002, the defendant requested transfer back to USP-Florence because the county jail was not permitting him to make phone calls freely. Once again, this request was denied, but the trial judge ordered that the defendant be permitted to make local phone calls in order to obtain local counsel. Finally, on October 3, the defendant informed the court that he was still not being permitted to make local phone calls, and that the jail was not complying with the court's earlier order of October *670 1. At this hearing, the sheriff explained that a mistake had been made and the defendant had inadvertently been denied phone access. The defendant reiterated his request to be transferred to USP-Florence for the purpose of retaining counsel. The trial court granted the request and the defendant was remanded to USP-Florence on October 6, 2002.

The defendant was transferred back to Arapahoe County in late October and, at a hearing on November 1, 2002, the trial court appointed the public defender to represent the defendant after determining that private counsel was not forthcoming. The public defender purported to revoke all prior waivers of rights made by the defendant. At this point, because retaining private counsel was no longer an issue, the defendant made no further requests for transfer.

Nevertheless, the defendant was returned to USP-Florence four additional times over a period of

twenty three months. He was transferred from state to federal custody on November 5, 2002. Again, four months later, on March 4, 2003, he was transferred to state custody and returned to USP-Florence. Again, a month and a half later, he was transferred from state to federal custody on May 14, 2003. And again, almost seventeen months later, he was transferred back to USP-Florence on October 7, 2004. This last transfer occurred after the defendant objected to further transfer by filing his first motion to dismiss the charges for violation of his rights under the IAD; apparently, this transfer occurred as the result of an "administrative error." None of these four most recent transfers benefited the defendant in any way. They were not made for the purpose of allowing the defendant to obtain counsel or to enable him to prepare for trial.

III.

A defendant may waive his rights under the IAD because the agreement's protections exist for his benefit. *See* *New York v. Hill*, 528 U.S. 110, 116, 120 S.Ct. 659, 145 L.Ed.2d 560 (2000) (quoting *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 704, 65 S.Ct. 895, 89 L.Ed. 1296 (1945)); *State v. Vinson*, 182 S.W.3d 709, 712 (Mo.Ct.App.2006)("The [no return provision] ... is thus for [the defendant's] benefit and is waivable."). Courts have generally agreed that waiver occurs under the IAD when the prisoner requests to be treated in a manner inconsistent with the protections of the particular provision of the agreement at issue. *Hill*, 528 U.S. at 114, 120 S.Ct. 659 (collecting cases). In the context of the no return provision, a request by the prisoner to be transferred back to the sending state has been

held repeatedly to be the type of "inconsistent" conduct that constitutes waiver. *See, e.g.,* *Webb v. Keohane*, 804 F.2d 413, 415 (7th Cir.1986); *U.S. v. Black*, 609 F.2d 1330, 1334 (9th Cir.1979); *United States v. Eaddy*, 595 F.2d 341, 344 (6th Cir.1979); *Vinson*, 182 S.W.3d at 712; *State v. Hill*, 638 So.2d 1376, 1379-80 (Ala.Crim.App.1993); *People v. Browning*, 104 Mich.App. 741, 306 N.W.2d 326, 334-35 (1981). The Supreme Court has suggested that a receiving state might be permitted to transfer a prisoner back to the sending state before trial "when it would be mutually advantageous and the prisoner accordingly waives his rights under Article IV(e)." *Bozeman*, 533 U.S. at 157, 121 S.Ct. 2079. However, when a transfer back to the sending state before trial occurs and is neither requested by the prisoner nor made for his benefit, the IAD requires dismissal of the charges. *Id.* at 155-56, 121 S.Ct. 2079; *Browning* 306 N.W.2d at 335 ("Where the transfer back is not done at the request of defendant or his attorney, we believe that the state should be charged with the responsibility therefore.").

In this case, the defendant was returned from state custody to federal custody five separate times without his consent, express or implied. The defendant's request to be remanded to USP-Florence was for the limited purpose of retaining counsel because he was denied the ability to communicate with counsel by the receiving state, Colorado. This request came after the initial transfer on August 27, 2002, which was made, again, at the trial court's initiative, not the defendant's. After the appointment of counsel, he was transferred four additional times over a period of twenty-three months. As of November 1, 2002, the defendant's need to retain

counsel was no longer a concern and so *671 the four transfers that occurred after that date were made neither for the defendant's benefit nor at his request. Indeed, the record discloses that the most recent of these transfers, which occurred almost two years after the appointment of counsel, was made as the result of an "administrative error." Our lower courts have held, and I agree, that "the purpose of the [IAD] requires that the adverse consequences of official oversights be visited upon the prosecution, not upon the prisoner." *People v. Lincoln*, 42 Colo.App. 512, 601 P.2d 641, 644 (1979).

The majority holds that the first transfer, which occurred on August 27, 2002, did not violate the IAD because the defendant waived his right to challenge this particular transfer. The defendant did not request the transfer, nor does the record indicate any ostensible benefit which accrued to the defendant as a result of the transfer. It is unclear to me precisely what conduct the majority argues constituted a waiver of this first violation: the defendant's subsequent request for transfer, which was not made until one month after this transfer, maj. op. at 665-66, 666, 667, or his request for a continuance of the trial made at that first hearing, maj. op. at 666-67. I therefore address each of these arguments below.

A.

With respect to the retroactive theory of waiver, the majority concludes that the defendant's requests for transfer, which occurred later in time, on September 27, October 1 and October 3, effectively waived his unilateral transfer on August 27, even though he made no request for transfer at that time. The

majority fails to cite any authority for the proposition that a violation of the IAD may be waived retroactively, that is, after the violation has already occurred. Maj. op at 665-66, 666, 667.

There exists, however, authority for the contrary proposition, at least in the context of article III's speedy trial provision. *Monroe v. State*, 978 So.2d 177, 183 (Fla.Dist.Ct.App.2007); *State v. Smith*, 686 S.W.2d 543, 549 (Mo.Ct.App.1985); *State v. Mason*, 90 N.J.Super. 464, 218 A.2d 158, 163 (App.Div.1966); *Commonwealth v. Mayle*, 780 A.2d 677, 683 (Pa.Super.Ct.2001). In these cases, the various jurisdictions held that a defendant could not validly waive his rights under the IAD after the statute's speedy trial time had expired. In *Monroe*, for example, the court held that, even though the defendant had expressly agreed to waive his speedy trial rights on various occasions, he was entitled to discharge since these "waivers" were made after the 180-day period had expired and the violation had already occurred. 978 So.2d at 183. Thus, the case law indicates that courts have been unwilling to recognize retroactive waivers of speedy trial rights under the IAD.

I can find no compelling reason to reject this trend in the context of the right of no return under article IV(e). While, as I explain below, I recognize that speedy trial and no return rights should not be conflated in terms of the conduct required to waive each, the inconsistent conduct analysis of *Hill* provides no basis for holding that retroactive waiver is inconsistent with speedy trial rights but consistent with no return rights. Therefore, I conclude that the defendant's subsequent request to transfer back to

the sending state could not remedy the first violation of IV(e) that occurred here.

B.

The majority also states that, "arguably," the defendant acted inconsistently with the no return protection of article IV(e) by moving for a trial continuance which was granted, and therefore waived his right not to be returned to the sending state before trial. Maj. op. at 666-67. This holding conflates the concept of waiver under the no return provision, IV(e), with waiver under the speedy trial provision, IV(c).

While it is true that rights under the IAD may be waived, "[w]hat suffices for waiver depends on the nature of the right at issue." *Hill*, 528 U.S. at 114, 120 S.Ct. 659. As mentioned, other jurisdictions have held that IAD rights may be waived if the defendant takes actions inconsistent with the particular right. *Id.* (collecting cases). This formulation has been cited with approval by the Supreme Court. *Id.* Under *Hill*, the particular*672 type of conduct that will be "inconsistent" will depend on the nature of the right at issue.

In the context of the speedy trial provision of IV(c), the particular inconsistent conduct giving rise to waiver has been held to include a defendant's motion for a continuance of the trial. *Reed v. Farley*, 512 U.S. 339, 353, 114 S.Ct. 2291, 129 L.Ed.2d 277 (1994); *see also* *Hill*, 528 U.S. at 115, 120 S.Ct. 659 (finding waiver in the context of article III's 180-day speedy trial requirement). This rule makes sense. Requesting that trial be delayed is logically

inconsistent with demanding that it occur speedily and within the statutory time frame. As mentioned, other jurisdictions have held that a defendant may waive his rights under IV(e)'s no return provision by requesting a transfer to the sending state. Again, these actions are logically inconsistent with the protections afforded by the specific provision: a request to be transferred is inconsistent with the right not to be transferred. FN1

> FN1. This reasoning has been echoed by other courts, and most explicitly by *Browning*, 306 N.W.2d at 335. Citing *Eaddy*, 595 F.2d at 344, and *Gray v. Benson*, 443 F.Supp. 1284 (D.Kan.1978), *Browning* examined the concept of waiver in the article IV context and distinguished the manner in which the separate and distinct speedy trial and no return rights might be waived:
>
> > [I]t is not difficult to accept that the right to trial before return might be waived by a prisoner whose priorities require a return before trial. Similarly, the right to trial within a certain number of days may likewise be waived, for reasons which are similarly high on the prisoner's priorities. Certainly, our own 180-day rule may be impliedly waived by the defendant if the case stands ready for trial within that time, but the "defendant's delaying motions" cause a sufficient delay to preclude trial from commencing before the end of that period.
>
> 306 N.W.2d at 335 (internal citations omitted). Significantly, the *Browning* court

> concluded that the fact that the defendant had waived his speedy trial rights under article III and under article IV(c) was not determinative of whether he had waived his article IV(e) no return rights. *Id.*

The majority conflates these two provisions, articles IV(c) and IV(e), and the kinds of conduct required to waive their protections. It holds that a defendant who requests a continuance, conduct that is not inconsistent with the right granted by IV(e) to remain in the receiving state, waives not only his speedy trial rights, but his no return rights as well. While requesting a continuance is inconsistent with the speedy trial rights of the IAD, nothing in the nature of the request for a trial continuance itself is inconsistent with the right to remain in the receiving state until trial.

The majority finds support for the proposition that a waiver of article IV(c) speedy trial rights constitutes a waiver of article IV(e) no return rights by relying upon dictum in *Bozeman* that cites *Hill*, which addressed speedy trial rights under article III:

> Although we reject Alabama's interpretation of the Agreement, our decision does not bar a receiving State from returning a prisoner when it would be mutually advantageous and the prisoner accordingly waives his rights under Article IV(e). *Cf. Hill*, 528 U.S. at 114-115[, 120 S.Ct. 659] (holding that a defendant may waive his rights *under Art. III of the Agreement*).

533 U.S. at 157, 121 S.Ct. 2079 (emphasis added). The majority argues that by citing *Hill* in the context

of a general discussion of waiver, *Bozeman* analogizes the manner in which no return rights may be waived to the manner in which speedy trial rights under article IV may be waived. Maj. op at 667. I disagree that this statement in *Bozeman* and reference to *Hill* analogizes waivers of article IV(c) rights to waivers of article IV(e) rights. *Hill*, an article III case, is cited in *Bozeman* for the general proposition that IAD rights may be waived by inconsistent conduct, and not for the proposition that the manner in which no return rights and speedy trial rights are waived is identical. *Id.* To the contrary, *Hill* states that "[w]hat suffices for waiver depends on the nature of the right at issue." 528 U.S. at 114, 120 S.Ct. 659. Hence, the majority's construction of the manner in which the two distinct article IV rights may be waived, that the waiver of one also waives the other, contravenes the only case it relies on for support.

IV.

I now turn to the four transfers that occurred after November 1, 2002, after counsel *673 was appointed to represent the defendant. The majority excuses these violations of article IV(e) of the IAD by holding, without citing authority, that the defendant's request for a transfer for the limited purpose of securing the counsel of his choosing acted as an absolute waiver of his right to refuse all subsequent non-consensual transfers, irrespective of how many times these transfers might occur. Maj. op. at 663, 665-66. Here, the majority holds that the waiver lasted for over two years.

The majority's decision allows a waiver made on a

one-time basis and for a limited purpose to continue indefinitely, for the lifetime of pre-trial proceedings. It holds that a limited, one-time waiver excuses all transfers, whether consensual or not, for potentially years on end. This contravenes the purposes of the IAD as stated by the Supreme Court and the various federal circuit courts of appeal, and violates article IX's command that the "agreement shall be construed liberally so as to effectuate its purposes."

The majority suggests that the purposes for which Congress enacted the no return provision of article IV(e) are unclear. Maj. op. at 665. I disagree. The Supreme Court and several federal circuit courts of appeal have articulated at least two purposes of Article IV(e) with which the majority's holding is at odds: (1) encouraging expedited resolution of outstanding charges against the prisoner by requiring that the receiving state bear the expense of housing the prisoner prior to trial; and (2) protecting the prisoner from prosecutorial abuse of the simplified detainer system by lodging groundless and bad-faith detainers. *Bozeman*, 533 U.S. at 154, 121 S.Ct. 2079; *Dixon*, 592 F.2d at 336.

In *Bozeman*, the Court explained that "the purpose of the 'no return' provision cannot be ... a simple, direct effort to prevent the interruption of rehabilitation." 533 U.S. at 154, 121 S.Ct. 2079. Instead,

> [t]he agreement not only prevents "return," but it also requires the receiving State to pay for the prisoner's incarceration in that State during the period prior to trial ... That requirement may provide the receiving State with an incentive to shorten the pretrial period to proceed to trial faster

than 120 days or not to seek extensions-thus disposing of detainers, and the attendant "uncertainties which obstruct programs of prisoner treatment and rehabilitation," in the most "expeditious" manner.

Id. at 155, 121 S.Ct. 2079 (quoting 18 U.S.C.A. § 2 art. I). If the receiving state could use a one-time request for transfer as an excuse to shuttle the prisoner back and forth to the sending state indefinitely, then the state would be able to circumvent one of the primary purposes of article IV(e): encouraging expeditious resolution of pending charges by requiring the receiving state to bear the expense of housing the prisoner. This is precisely what happened here. By transferring the defendant back to USP-Florence on these four occasions, Colorado saved itself the expense of housing the defendant for non-trivial periods of time during an extensive pretrial period.

Dixon illustrates another purpose Congress had in mind when it adopted IV(e): preventing prosecutorial abuse of the IAD's simplified detainer system. 592 F.2d at 336. Again, IV(e) forces the receiving state to bear the burden of housing the prisoner prior to trial in order to achieve its aims, which, as *Dixon* points out, include discouraging the lodging of frivolous or bad faith detainers. To treat a request for a one-time transfer as a license to prosecutors to transfer prisoners without restraint effectively bypasses the financial deterrent on prosecutorial misconduct article IV(e) was designed to impose.

Finally, the majority claims that nothing in the statute suggests that a defendant's IV(e) right not to

be transferred to the sending state prior to trial "springs back into effect each time he is returned to that state for further proceedings in the same prosecution." Maj. op. at 665-66. There appears to be no authority directly on point either way. However, the few jurisdictions that have even obliquely addressed this issue have all indicated a willingness to treat each transfer separately. *See, e.g.,* *Black*, 609 F.2d at 1334 (defendant alleged that the government violated the IAD's no return provisions; the court noted that the defendant was returned to the sending state's custody on three separate*674 occasions, but that "[o]n each occasion he requested the return."). Likewise, the Supreme Court suggested as much in *Bozeman:* "*[E]very* prisoner arrival in the receiving State, whether followed by a very brief stay or a very long stay in the receiving State, triggers IV(e)'s 'no return' requirement." 533 U.S. at 154, 121 S.Ct. 2079 (emphasis in original).

I am authorized to state Chief Justice MULLARKEY and Justice MARTINEZ join in this dissent.

APPENDIX B

I. Federal Interstate Agreement on Detainers
28 U.S.C. Appendix 2, Section 2, page 692

United States Code, Title 18, Appendix 2.

§ 2. Enactment into law of Interstate Agreement on Detainers

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the following form:

"The contracting States solemnly agree that:

"Article I

"The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

"Article II

"As used in this agreement:

"(a) 'State' shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

"(b) 'Sending State' shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

"(c) 'Receiving State' shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

"Article III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable

continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the

prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition

referred to in paragraph (a) hereof shall void the request.

"Article IV

"(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided*, That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided further*, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

"(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in

the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

"(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"Article V

"(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority

in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been

pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

"(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in

any other manner permitted by law.

"(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

"Article VI

"(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

"(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

"Article VII

"Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

"Article VIII

"This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

"Article IX

"This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the

constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters."

APPENDIX B

II. Colorado Interstate Agreement on Detainers C.R.S. § 24-60-501

Colorado Revised Statutes (C.R.S.) § 24-60-501. Disposal of detainers against prisoner based on untried charges

The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The Agreement on Detainers

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The

request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the

prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition

referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he had lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in

the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or

complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same

with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provisions of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement

shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.